

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by
Stephen W. Cooper, Commissioner,
Department of Human Rights,

FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND ORDER

Complainant,

VS.

Mower County Social Services,

Respondent.

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson on February 16 and 17, 1988 at the Mower County Courthouse, Austin, Minnesota. The final post-hearing brief was received on May 13, 1988, at which time the record closed.

Carl M. Warren, Esq., Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Complainant, Minnesota Department of Human Rights. Richard A. Beens, Esq., from the law firm of Steffen & Munstenteiger, P.A., 403 Jackson Street, Suite 301, Anoka, Minnesota 55303, appeared on behalf of the Respondent, Mower County Social Services.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. sec. 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. SS 14.63 - 14.69 (1986).

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether Mower County Social Services refused to hire the Charging Party, Doris J. Hoy, formerly known by her maiden name as Doris J. Miller, because of her pregnancy and/or marital status, thereby discriminating against her in violation of Minn. Stat.

363.03, subd. 1(2)(a) and (5) (1986).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Doris J. Hoy, who at all times relevant to the matters at issue was an unmarried female, worked as a clerical employee for Mower County Social Services from May of 1983 to September of 1983, and from August 30, 1984 to December 7, 1984.

2. Prior to her employment with Respondent, Ms. Hoy attended Austin Community College from January of 1982 through June of 1983 and amassed fifty-six (56) out of the sixty-eight (68) credits needed to graduate with a general office major. Her studies included courses in typing, accounting, general office practices, business English, human relations, psychology and business machines.

3. While attending Austin Community College, Ms. Hoy worked from July of 1982 to January of 1983 in the school's audio visual department and from January of 1983 to May of 1983 in its nursing department. Both were clerical jobs which, among other general office duties, involved typing, filing, handling equipment, meeting people, dealing with students, handling mail and answering phones.

4. In May of 1983, Ms. Hoy obtained employment at Social Services through an on-the-job training program known as SEMCAC. Ms. Hoy was supervised by Audrey Hallum, the supervisor of Mower County Social Service's clerical support staff. Her responsibilities included filing, copying, typing entries into intake case records and light letter typing. Ms. Hallum decided which typing projects Ms. Hoy would take from the assignment basket and proofed her work.

5. The SEMCAC position expired in August of 1983. At that time, either Ms. Hallum or the director of Social Services, Robert Schulz, asked her to stay on as a temporary Clerk Typist I to fill in for a member of the clerical support staff who was out on an extended sick leave. Ms. Hoy took the job and became a Social Services employee earning \$6.61 an hour. She continued to be supervised by Ms. Hallum, but her responsibilities increased. She began to rotate with other members of the clerical support staff at the receptionist desk during the noon hour and at coffee breaks. In addition, Ms. Hallum no longer monitored the assignments Ms. Hoy was given. Rather, she operated in the same manner that the other clerical support staff operated, taking whatever work was available in the assignment basket. Moreover, Ms. Hallum also no longer proofed all of Ms. Hoy's typing assignments. Rather, upon completion, she took many of the projects directly to the people who had originated them. This was so even though she was now working on projects that required greater skill.

6. This temporary Clerk Typist I position expired in September of 1983. Ms. Hoy did not have any difficulty performing the job and did not receive any negative comments regarding her work. Ms. Hallum told Ms. Hoy that she had done quality work. In a letter written on Ms. Hoy's behalf, Ms. Hallum stated:

Doris [Hoy] came into our office in May, 1983 through the CETA Program and began immediately to type confidential materials. Her ability to handle the appropriate response to incoming clients was a bonus for us

Doris learned a great deal during the CETA scheduled

program, and we had an emergency requirement for a temporary hire at about the same time as the CETA Program ended. Our Director approved hiring Doris for the emergency appointments Doris gave us the work input to more than hold our own in addressing the

workload. We even had an opportunity to review very old records in an effort to destroy those unnecessarily retained. It meant careful proofreading and also confidentiality in what was read; Doris handled this project very well.

Doris became a valuable trained person in our office. She has the potential to be a very qualified confidential clerical worker in any office but especially in the area of social service programs which she seems to enjoy.

In a letter to Ms. Hoy dated October 17, 1983, Mr. Schulz stated, 'I feel you are an excellent worker, and you possess the necessary skills to contribute to a good work effort.'

7. In August of 1984, Social Services found it necessary to hire another temporary Clerk Typist I and contacted Ms. Hoy through the SEMCAC office to see if she would be interested. Hoy took the job and worked for Social Services from August 30, 1984 to December 7, 1984, when the temporary position expired. Ms. Hoy's duties were essentially the same as they were during her previous temporary employment with the agency. She took typing assignments from the basket without screening by Ms. Hallum, and Ms. Hallum did not proof her work. She rotated with the other clerical support staff at the receptionist desk during the noon hour and breaks and even replaced the receptionist for two days while she was out sick. As before, Ms. Hoy did not receive any negative comments about her work. Ms. Hallum and the other workers with whom she had contact complimented her with regard to her performance.

8. During her second period of temporary employment, Ms. Hoy became aware that there was going to be an opening with regard to a permanent Clerk Typist I position. She informed both Ms. Hallum and Mr. Schulz that she was interested in it and wanted to be considered. Ms. Hallum told her that she had excellent qualifications and that should a fulltime permanent position arise, she would be qualified for it. Ms. Hoy felt certain that she would get the permanent position. She had worked in the office, was familiar with office procedures and knew the people. In addition to the praise which Ms. Hoy had received regarding her work, the lack of negative comments and Ms. Hallum's statement that she had excellent qualifications for a permanent

position, Ms. Hallum had shown her duties and procedures that were not within her normal routine, "just in case."

9. Subsequent to telling Ms. Hallum and Mr. Schulz that she was interested in the permanent position, in mid-November 1984, Ms. Hoy learned that she was pregnant. That same day, or the day following, she went in to see Ms. Hallum to let her know. Because she was certain she was going to get the permanent job, she wanted to tell Ms. Hallum and Mr. Schulz so that they would not think that she was hiding something from them. Prior to this meeting, Ms. Hoy and Ms. Hallum had had a friendly professional relationship. They would, on occasion, converse about non-work related subjects. Ms. Hallum's demeanor was friendly when Ms. Hoy entered her office. But, it changed when she told her that she was pregnant. Ms. Hallum looked away from her. She stopped making eye contact and the tone of her voice changed from friendly to distant, cold and unfriendly. She asked, 'You're not married are you?' Ms. Hoy said "No. I'm living with my boyfriend." Ms. Hallum asked

what their plans were. Ms. Hoy said that they were going to get married. Ms. Hallum replied, 'Why would he marry you now if he wouldn't have married you in the past?' Ms. Hoy perceived from Ms. Hallum's reaction that she was disappointed in her and was now looking down upon her. Ms. Hoy asked Ms. Hallum whether she should talk to Mr. Schulz about her pregnancy. Ms. Hallum stated that it was her choice. Either that day or the next day, Ms. Hoy went to Mr. Schulz and informed him of her pregnancy. Mr. Schulz told her that the pregnancy would not affect her chances of getting the permanent job because "that would be discrimination." Ms. Hoy's day-to-day relationship with Ms. Hallum changed following the revelation of her pregnancy. Ms. Hallum was no longer warm and friendly toward her and ceased conversing with her regarding non-work related matters. Their contacts, from that point on, were limited to the essentials necessary to get the work done.

10. Subsequent to her meeting with Ms. Hoy, Ms. Hallum made several statements to other Social Service employees regarding Ms. Hoy's pregnancy and/or marital status. Prior to the expiration of Ms. Hoy's temporary position, Marian Siegfried, a financial worker, went to Ms. Hallum and expressed her frustration regarding the fact that Social Services had not yet hired a permanent Clerk Typist I. She asked, Why in the world don't they get this over with? Why don't they just hire [Ms. Hoy]? Ms. Hallum replied, "Yes, but Mary, she is pregnant." Prior to the expiration of Ms. Hoy's temporary position, Ms. Hallum expressed disapproval of Ms. Hoy's living arrangements to Lois Fossey, a financial worker in the food stamps department. She stated words to the effect of, "I don't understand these girls anymore that would lower themselves to live with some fellow before they are married." She also stated that Ms. Hoy was the type of girl that would get a job like the Clerk Typist I position so that she would have medical insurance coverage after she became pregnant. Ms. Hallum expressed concern that they would train her in only to have her take a leave of absence and then they would have to find another person to fill her position while she was gone. After Ms. Hoy's temporary position had expired, Charlene Blowers, a financial worker in the AFDC area, asked Ms. Hallum why Respondent did not hire Ms. Hoy for the Clerk Typist I position. Ms. Hallum stated that she was not happy with Ms. Hoy's living arrangements. Ms. Blowers asked, "What living arrangements?: Ms. Hallum replied, "She is living with someone and they are not married." After Ms. Hoy's temporary position had expired, Donna Kuntz, a financial worker, asked Ms. Hallum whether the permanent Clerk Typist I had been approved and

expressed hope that Ms. Hoy would get it. Ms. Hallum stated, "It is too bad that she is single and pregnant."

11. Subsequent to the expiration of Ms. Hoy's temporary position, on December 20, 1984, Mr. Schulz submitted a Personnel Requisition form to the Minnesota Merit System requesting a list of certified candidates for a permanent Clerk Typist I position. The Merit System returned a list of seven certified candidates. Of the seven candidates, Ms. Hoy had the highest test score, and as a result, was ranked at the top of the list.

12. The Clerk Typist I position is an entry level position for which experience is not required. Social Services provides a six-month probationary period during which a new employee learns the responsibilities of the job.

13. Mr. Schulz and Ms. Hallum interviewed the candidates for the Clerk Typist I position. Ms. Hoy presented herself well at her interview. Neither Mr. Schulz nor Ms. Hallum had any reason to believe that Ms. Hoy could not

perform the job. However, they rejected her and instead hired Monica Grimm, a person who was not on the list certified by the Merit System but had transferred eligibility from another state.

14. The Merit System had determined that Monica Grimm was eligible for the position of Clerk Typist 1, II or III. Ms. Grimm directly applied to Mr. Schulz and was added to the interview list. Ms. Grimm had approximately 13 years of clerical experience and had worked in a social services department in Iowa for three years. She was qualified to use the following machines based on her prior experience: dictaphone, CRT, switchboard, calculator, adding machine, mimeo, copy machine and electric typewriter. Based on this experience and ability, Ms. Grimm was qualified for the Clerk Typist I position. Doris Hoy had approximately nine months of experience with Mower County Social Services but no experience on a CRT, and typed at approximately one-half the speed of Ms. Grimm.

15. Mr. Schulz, who made the ultimate decision regarding whom to hire, was aware of Ms. Hoy's pregnancy and marital status. He had discussed her pregnancy with Ms. Hallum, and he sought and relied upon Ms. Hallum's input in making his decision.

16. Ms. Hoy was married on February 1, 1985, and her first child was born on July 18, 1985. Ms. Hoy had filed a charge of discrimination with the Minnesota Department of Human Rights on March 21, 1985, prior to the birth of her child.

17. Following her rejection, Ms. Hoy continued to seek employment with Social Services. She kept her name on the Merit System Clerk Typist I list and was among the candidates which the Merit System certified to Respondent with regard to six permanent Clerk Typist I positions which it filled between her January 1985 rejection and the hearing in this matter. Hoy ranked at or near the top of each list. Respondent continued to reject her for these openings. At an interview with regard to one of the subsequent openings which

took place after Ms. Hoy had gotten married, Mr. Schulz or Ms. Hallum made a remark about the fact that her name had changed. In addition, with regard to two Clerk Typist I positions which were filled in 1987, Respondent did not interview Ms. Hoy or even contact her to let her know that the positions were open.

18. Subsequent to being rejected by Social Services, Ms. Hoy learned that an application which she had submitted to a different employer had been rejected because Social Services had refused to give a reference about her. This information disturbed her because she was required to list Mr. Schulz and Ms. Hallum as prior supervisors on job applications. She went to see Mr. Schulz and told him what she had learned. He told her that she would have to talk to Ms. Hallum because he had no control over the kind of reference that she might give regarding Ms. Hoy. Ms. Hoy then went to see Ms. Hallum. She told her that by refusing to give her a reference she was not giving her a fair chance to find another job. Ms. Hallum told Ms. Hoy that she should not be using her as a reference.

19. Ms. Hoy was surprised and upset when she learned that she had been rejected for the permanent Clerk Typist I position in January 1985. The rejection dashed her hope of providing added income to her family and her dream of eventually being able to send her children to college. It caused her

to be frustrated, angry and depressed. It made her feel that she was always going to come in second best. This affected her disposition which aggravated her relationship with her husband and others. Because she was unemployed when her baby was born, she had to return to Social Services to apply for medical assistance to cover the doctors' bills. Ms. Hoy's experience having to ask her former co-workers for welfare was degrading. Because Respondent continued to reject her, she eventually became discouraged and did not renew her certification with the Merit System when it expired in 1987.

20. The parties stipulated that Ms. Hoy met her obligation to attempt to mitigate damages in this matter. Had she received the Clerk Typist I position in question, Ms. Hoy's 1985 initial salary would have been \$14,164.80 per year and she would have earned \$11,284.43 for the period of January 28, 1985 to December 31, 1985 (i.e., \$13,055.00 minus the \$1,180.38 which she would have lost during the six weeks that she would have been unable to work following the birth of her first child. In 1986, she would have earned \$14,982.24. In 1987, she would have earned \$9,179.31 (i.e., \$15,735.96 minus the \$6,556.65 that she would have lost during the five months that she took off in connection with the birth of her second child. During the period of January 1, 1988 through February 16, 1988, she would have earned \$2,148.48. Thus, the total salary which she would have earned during the period of January 28, 1985 through February 16, 1988 would have been \$37,594.46. During that period of time, Ms. Hoy earned \$3,679.95 in other employment. Thus, the total backpay due Ms. Hoy is \$33,914.51.

21. Following her rejection by Respondent, Ms. Hoy incurred \$762.00 in medical expenses connected with the birth of her first child and \$850.00 in medical expenses connected with the birth of her second child. She would not have incurred these expenses had she been hired by Respondent.

22. The March 25, 1985 charge of discrimination filed by Ms. Hoy with the Minnesota Department of Human Rights against Mower County Social Services alleges employment discrimination on the basis of sex and marital status.

23. The Department found probable cause to believe that Respondent had

committed an unfair discriminatory practice and its subsequent attempts to resolve the matter through conciliation were unsuccessful.

24. A Complaint was issued by the Minnesota Department of Human Rights in this matter on December 3, 1987. An Answer was filed by Respondent on December 28, 1987.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction over this matter pursuant to Minn. Stat. SS 363.071 and 14.50 (1986).

2. The Department of Human Rights gave proper notice of the hearing in this matter and it has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Respondent is an employer within the meaning of Minn. Stat. 363.071, subd. 15 (1986).

4. The Minnesota Human Rights Act prohibits discrimination in employment. Minn. Stat. SS 363.01 and 363.03 provide in relevant part:

Sex. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth. Minn. Stat. sec. 363.01, subd. 29.

Employment. Except when based on a bona fide occupational qualification, it is an unfair employment practice

(2) for an employer, because of..... sex [or]
marital status

(a) to refuse to hire or maintain a system of
employment which unreasonably excludes a person
seeking employment . . .

(5) for an employer..... with respect to all
employment related purposes..... not to treat women
affected by pregnancy, childbirth, or disabilities
related to pregnancy or childbirth, the same as other
persons who are not so affected but who are similar
in their ability or inability to work. Minn. Stat.
sec. 363.03, subd. 1(2)(b) and (5).

The Respondent engaged in an unfair discriminatory practice in violation of Minn. Stat. sec. 363.08, subd. 1(2)(b) and (5) by refusing to hire Doris J. Hoy as a permanent Clerk Typist I based upon her pregnancy and marital status.

5. Respondent's discriminatory conduct showed a willful indifference to the rights of Doris J. Hoy.

6. Doris J. Hoy is entitled to compensatory damages in the amount of \$33,914.51 in backpay and \$1,612.00 in medical expenses.

7. Doris J. Hoy is entitled to damages for mental anguish and suffering in the amount of \$2,000.00.

B. Doris J. Hoy is entitled to receive \$2,000.00 in punitive damages.

9. Respondent should pay the State a civil penalty in the amount of \$1,000.00.

10. Doris J. Hoy is entitled to be hired immediately by Respondent as a permanent Clerk Typist I and should be granted retroactive seniority and benefits, e.g., pension credits, vacation leave, sick leave, etc.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

1. That Respondent shall cease and desist from the discriminatory practice set forth herein.

2 . That Respondent shall immediately hire Doris J. Hoy as a permanent Clerk Typist I and grant her retroactive seniority and benefits, including but not limited to pension credits, vacation leave and sick leave.

3. That Respondent shall pay Doris J. Hoy compensatory damages in the amount of \$35,526.51.

4. That Respondent shall pay Doris J. Hoy \$2,000.00 for mental anguish and suffering and \$2,000.00 in punitive damages.

5. That Respondent shall pay to the general fund of the State of Minnesota as a civil penalty the amount of \$1,000.00. This payment shall be filed with the Minnesota Department of Human Rights for submission to the general fund.

Dated this 13th day of June, 1988.

PETER C.ERICKSON
Administrative Law Judge

Reported: Transcript Prepared by Jennifer A. Johnson, Kirby A. Kennedy & Associates.

MEMORANDUM

The claim herein is one of disparate treatment. It is alleged that the employer, in not hiring the Charging Party, treated her less favorably than others on the basis of an impermissible classification, namely her pregnancy and marital status. *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 623-24 (Minn. 1988). In a disparate treatment case, proof of discriminatory motive or intent is critical, however, it can be inferred from the disparate treatment. *International Brotherhood of Teamsters v. U.S.*, 431 U.S. 324, 335-36, n. 15 (1977). The Minnesota Supreme Court has adopted the three-part analysis first set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) for the adjudication of cases brought under the Act. *Danz v. Jones*, 263 N.W.2d 395 (Minn. 1978); *Hubbard v. United Press International*, 330 N.W.2d 428, 442 (Minn. 1983). *Sigurdson v. Isanti County*, 386 N.W.2d 715, 719-20 (Minn. 1986). In *Lamb v. Village of Bagley*, 310 N.W.2d 508, 510 (Minn. 1981), the Supreme Court articulated the three-part analysis as follows:

[T]he complainant has the initial burden of establishing a prima facie case of discrimination. *Danz*, 263 N.W.2d at 399. This prima facie case is established upon a showing

of unequal treatment. Discriminatory intent need not be proved at this stage. The burden then shifts to the defendant to articulate some legitimate non-discriminatory reason for the disparity in treatment. If the defendant comes forward with sufficient proper rebuttal evidence, the complainant must then carry the ultimate burden of persuasion to show, by a preponderance of the evidence,

that the legitimate reasons offered by the defendant are not so, but only a pretext for discrimination. In carrying the burden of persuasion, the complainant may proceed either by persuading the trier of fact that it is more likely that the defendant was racially motivated or that the defendant's proffered explanation is unworthy of credence.

The specific elements of a prima facie case are modified to fit varying factual patterns and employment contexts. Hubbard, supra, 330 N.W.2d at 442.

Generally, the complainant must show that: (1) the charging party is a member of a protected group; (2) she applied for and met the minimum qualifications for employment; (3) despite her qualifications, she was denied employment; and (4) after she was rejected, the employer continued to seek applicants for the position with similar qualifications. State v. Hennepin County, 420 N.W.2d 634, 640 (Minn. App. 1988).

In this case, Complainant did establish a prima facie case of discrimination based upon pregnancy and marital status. The record shows that the Charging Party was pregnant and that her unmarried status was significant to the supervisor of clerical employees at Mower County Social Services. Ms. Hoy applied for the permanent position of Clerk Typist I and there is no dispute that she was qualified to assume the duties of that position. However, Ms. Hoy's application was rejected and the Respondent hired another individual with similar qualifications.¹ Thus, the Judge has concluded that a prima facie case has been shown by the Complainant and that the burden is appropriately shifted to the Respondent.

Mower County Social Services contends that Monica Grimm was hired in January of 1985 for the position of Clerk Typist I because of her superior qualifications; that Doris Hoy's rejection for that position was not based on any discriminatory motivation. The Judge has concluded that the Complainant has proved, by a preponderance of the evidence, that the legitimate, non-discriminatory reason for hiring Monica Grimm proffered by the Respondent is only a pretext for discrimination. Doris Hoy was ranked number one on the list of applicants for the position of Clerk Typist 1. She had worked in the Mower County Social Service Department for approximately nine months and was

familiar with all aspects of the job she applied for. In addition, she had been working very successfully with all of the current employees in social services. Although Monica Grimm had more years of experience performing clerical duties, neither Mr. Schulz nor Ms. Hallum had observed her performance or had any idea of how she worked with other employees.

The most compelling evidence of pretext in this case are the statements which Ms. Hallum made to Ms. Hoy and other social services employees regarding Ms. Hoy's pregnancy and marital status. (Findings 9 and 10 above.) Mr. Schulz considered Ms. Hallum's input on the hiring decision vital because she would be supervising the employee chosen. The record is clear that Audrey

Respondent argues that the reason Monica Grimm was hired, rather than Doris Hoy, is that Ms. Grimm's qualifications were far superior to those of Ms. Hoy. The Judge will address that argument in the second stage of the three-part analysis.

Hallum was of the opinion that Boris Hoy should not be hired in the permanent position because she was both single and pregnant. After the initial rejection in January of 1985, Ms. Hoy was rejected on six subsequent hirings even though she had experience in the office and was ranked near the top of the list of applicants. In Anderson, supra, the Minnesota Supreme Court held that if a discriminatory motivation is shown to be a causative factor in an adverse employment action, the employer must be held liable and required to provide a full remedy even if the employer has shown that a legitimate, non-discriminatory reason for the action also exists. 417 N.W.2d at 624-27. This burden has surely been met by the Complainant.

The relief afforded to a victim of discrimination under the Minnesota Human Rights Act contemplates compensating the victim to restore her, as near as possible, to the same position she would have attained had there been no discrimination. Anderson at 627. Minn. Stat. sec. 363.071, subd. 2 (1986) provides that if discrimination is proved, the Administrative Law Judge: (1) shall order the respondent to pay compensatory damages in an amount up to three times the actual damages sustained; (2) may order the payment of damages for mental anguish or suffering; (3) may order punitive damages in an amount not more than \$6,000 pursuant to Minn. Stat. sec. 549.20; (4) shall order that the respondent pay a civil penalty to the State; and (5) may order the hiring of the charging party. As reflected above in the Conclusions and Order, the Judge has determined that it is appropriate to award Doris Hoy actual compensatory damages without prejudgment interest. The Judge has awarded damages for mental anguish and suffering based upon the Findings showing the turmoil experienced by Ms. Hoy after her rejection for employment.2 In addition, punitive damages have been awarded based upon the Judge's conclusion that the discrimination shown herein exhibits a willful indifference to the rights of the Charging Party. The Judge has considered all of the factors set forth in Minn. Stat. sec. 549.20, subd. 3 in arriving at an award of \$2,000 for punitive damages. Because of the intentional nature of the discrimination herein, the Judge has determined that a civil penalty in the amount of \$1,000

should be paid to the State of Minnesota. (Respondent stipulated at the hearing that it had financial resources available to pay a civil penalty up to the maximum amount provided in the statute.) Lastly, in order to make Ms. Hoy "whole", her hiring by Mower County Social Services with retroactive benefits is essential.

P.C.E.

2Respondent's contention that "emotional" damages can only be awarded if "the distress inflicted is so severe that no reasonable person could be expected to endure it", citing Hubbard, supra, at 439, has been rejected. The Judge adopts the analysis set forth by Administrative Law Judge George A. Beck in State v. International Union of Operating Engineers, Local #35, at 13-14, HR-83-034-GB (Decision issued November 7, 1983).